Supreme Court

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No. OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1996

RUSSELL BILLIOT and WENDY BILLIOT,

Petitioners,

vs.

STATE OF LOUISIANA IN INTEREST OF: JEREMIAH BILLIOT, DOB 12/14/92; DANIEL BILLIOT, DOB: 07/15/87; DAVID BILLIOT, DOB: 05/03/85; AND RACHEL BILLIOT, DOB: 10/09/82,

Respondent.

On Petition for a Writ of Certiorari to the State of Louisiana, 32nd Judicial District Court, Parish of Terrebonne

PETITION FOR A WRIT OF CERTIORARI

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39 pp

QUESTION PRESENTED

Are search and seizure orders issued by a judge in civil child abuse investigations subject to the Fourth Amendment's requirement of probable cause?

PARTIES TO THE PROCEEDING

All parties are listed in the caption.

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Petitioners Russell Billiot and Wendy Billiot respectfully request that a writ of certiorari be issued to review the judgment of the 32nd Judicial District Court, State of Louisiana, Parish of Terrebonne, in this case.

OPINIONS BELOW

The judgment sought to be reviewed was entered October 2, 1996 in the State of Louisiana, 32nd Judicial District, Terrebonne Parish. (App. A). Application for a supervisory writ to the Louisiana First Circuit Court of Appeals was denied on May 21, 1997 (App. B). Application for a supervisory writ to the Supreme Court of Louisiana was denied on June 27, 1997, with one judge dissenting (App. C).

The order issued by the district court commanding the Billiots to turn their children over to the Department of Social Services is now final under Louisiana law. The order, however, has been stayed by the district court pending review in this Court.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The United States Constitution, Amendment IV:

> The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by

> oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Louisiana Children's Code, Art. 612(A):

> Upon receiving a report of abuse or neglect of a child who is not in the custody of the state, the local child protection unit of the department shall promptly make an investigation in order to ascertain whether such abuse or neglect has occurred. This investigation shall include a preliminary investigation as to the nature, extent, and cause of the abuse and neglect and the identity of the person actually responsible for the child's condition. This preliminary investigation shall include an interview with the child and his parent or parents or other caretaker. Admission of the investigator on school premises or access to the child in school shall not be denied by school personnel.

STATEMENT OF THE CASE

On November 27, 1995, the State of Louisiana Department of Social Services (DSS) in Terrebonne Parish received a report of child abuse and neglect concerning the children of Russell and Wendy Billiot. At the time of the complaint, the four Billiot children were aged 13, 10, 8, and 2 years. The report alleged that the Billiot children were "left home alone for hours at a time," that they "were always running in the street unsupervised," and that "the two year old child who suffers from Down Syndrome was observed in the middle of the street and that once

said child was brought home the parents were not aware that he was not in the house."

The following day a written notice was delivered to Mr. and Mrs. Billiot advising them that they were the subject of a child abuse and neglect investigation. Mr. and Mrs. Billiot consented to be interviewed by the DSS investigator, gave the investigator references to a social worker and a public school teacher, both of whom regularly came into their home in connection with a program for their Down Syndrome child. They also allowed the investigator to see their children at the front door of the home, but refused to let the investigator enter their home or interview their children.

On January 3, 1996, DSS filed a "Motion and Order Compelling Entry And For Interview" together with a supporting affidavit. None of the moving papers informed the court of the nature of the allegations or any information to reveal the reliability of the informant, but simply recited "[t]hat a complaint of abuse and/or neglect of the minor children has been received by the Department of Social Services."

The requested order was granted on an *ex parte* basis that same day by the Honorable Paul R. Wimbish, District Court Judge. Neither the moving papers, nor the judge's order cited any statutory authority for the issuance of the Entry Order.

On January 5, 1996, the Billiots filed a "Motion to Quash or Set Aside Order Compelling Entry And For Interview" together with supporting affidavits and a memorandum of authorities. The Billiots argued that the moving papers failed to satisfy the statutory criteria for the issuance of Entry Orders contained in Louisiana Children's Code Art. 613 (which was the implicit basis for the motion and order) and that the statute

violated the Fourth Amendment both on its face and as applied.[1] This statute provides:

> Entry orders
>
> A. If in the course of an investigation of a report, admission cannot be obtained to the home, school, or any other place where the child may be found, the investigator shall apply to the juvenile court for an order authorizing an entry for the purposes of interviewing the child and other members of the household, for the visual inspection of the child, and for an inspection of the home to the extent such an inspection is essential to the investigation of specific allegations. The affidavit of the applicant must demonstrate:
>
> (1) That reasonable suspicion exists that the child has been abused or neglected.
>
> (2) That entry has been denied.
>
> B. The court may grant such an order on an ex parte application and may also order a law

1. The Billiots later (June 26, 1996) filed affidavits contesting the accuracy of the anonymous tipster's allegations. Specifically, they filed the affidavit of the neighbor who found their Down Syndrome child in the street. This neighbor, the wife of a police officer, stated under oath that Mrs. Billiot came out of the house looking for her missing child within two minutes of his disappearance. She also swore that the Billiot children were not left home alone, except for short-term babysitting by their 13 year old sister, and that in five years she had never known the Billiot children to be playing in the street unsupervised.

> enforcement officer to accompany the applicant in executing the entry order.

By agreement of the parties, enforcement of the January 3 Entry Order was delayed until the court could hear the Billiot's motion to quash. On February 27, 1996, the district court heard oral arguments on this motion.

On May 15, 1996, the district court granted the motion to quash on the narrow basis that the statutory criteria under Art. 613 had not been satisfied in that the supporting affidavit failed to allege that entry had been denied by the Billiots.

On June 13, 1996, DSS filed a new "Motion and Order Compelling Interview under Article 612 and Motion and Order Compelling Entry under Article 613 with Amended Affidavit." Art. 612(A) provides, in pertinent part:

> Upon receiving a report of abuse or neglect of a child who is not in the custody of the state, the local child protection unit of the department shall promptly assign a level of risk to the child based on the information provided by the reporter. Reports of high and intermediate levels of risk shall be investigated promptly. This investigation shall include a preliminary investigation as to the nature, extent, and cause of the abuse or neglect and the identity of the person actually responsible for the child's condition. This preliminary interview shall include an interview with the child and his parents or parent or other caretaker.

In their memorandum filed June 26, 1996, the Billiots

contended that "Judicial warrants may only be issued upon probable cause" (p. 10) and "Article 613's lesser standard of reasonable suspicion is a violation of the Fourth Amendment and is, therefore, unconstitutional." (p. 12)

Following oral argument on June 27, 1996, DSS submitted a Memorandum in Support of its Motion to Interview (July 8, 1996). In its memorandum, DSS summarized the Billiots' contentions as follows at p. 7: "The Billiot's [sic] require that [DSS] use a standard of probable cause, maintain that the information is reliable and obtain what is tantamount to a criminal search warrant and possible [sic] even an arrest warrant before even speaking to their children." DSS responded to this argument on p. 8 by contending: "DSS maintains that Article 612 and Article 613 as written are constitutional and that all rights under the Fourth and Fourteenth Amendments have been adequately protected by a balancing and weighing of all interest by the Louisiana Legislature."

On October 2, 1996, Judge Wimbish issued an order mandating that the Billiots turn their children over to DSS for an interview under Art. 612. The district court denied the motion for the entry into the Billiot home holding that it was an unnecessary intrusion in light of the totality of circumstances.

The Billiots made an application for a supervisory writ to the Louisiana First Circuit Court of Appeals on October 23, 1996 which was amended on November 19, 1996. The Billiots again argued at p. 16:

> The district court sought to avoid the Billiots' constitutional argument by declining to order an entry into the home under Art. 613, and basing its order for an interview on Art. 612. As we have demonstrated, the district court's

> authority to issue the interview order is properly based on Art. 613, not Art. 612. But even if Art. 612 is the basis for an order, so construed it is also unconstitutional for the very same reason. No court order may issue which is in the nature of a warrant except upon the demonstration of probable cause. While the Billiots believe the correct statutory analysis is based on Art. 613, the constitutional analysis transcends section numbers—any order in the nature of a warrant from any court anywhere in the nation on any issue must be predicated on the standard of probable cause.

Judge Wimbish stayed the enforcement of his entry order pending a decision by the Court of Appeals.

On May 21, 1997, the Court of Appeals denied the supervisory writ without written opinion.

The Billiots then applied for a supervisory writ to the Supreme Court of Louisiana on June 23, 1997. Again, Judge Wimbish stayed the enforcement of his order pending decision by the Louisiana Supreme Court. The Billiots renewed their arguments that the order violated their Fourth Amendment rights in that it was not supported by probable cause, as well as the statutory and constitutional infirmities of Art. 613. *See* Application for Supervisory Writ at 7-8.

Without opinion, the Supreme Court of Louisiana denied review on June 27, 1997, with one judge voting to grant the writ.

On July 3, 1997, Judge Wimbish, once again, stayed the

enforcement of his order pending review by this Court of the Billiots' federal constitutional claim.

REASONS FOR GRANTING THE WRIT

I.

THERE IS NO "CHILD ABUSE" EXCEPTION TO THE FOURTH AMENDMENT.

The Louisiana legislature has decided that warrants for child abuse investigations may be issued upon a finding of reasonable suspicion. Louisiana Children's Code Article 613. In this case, the Louisiana courts have decided that a warrant to investigate child abuse may be issued with even less evidence. If the Louisiana Department of Social Services wants a warrant to investigate child abuse a showing of probable cause is not necessary. Rumors, innuendos, and fabrications whispered into a child abuse hotline will suffice. Louisiana has concluded that there is a "child abuse exception" to the Fourth Amendment.

The Louisiana Department of Social Services (DSS) contends that the Fourth Amendment does not apply to the issuance of court orders compelling interview of children during child abuse investigations. In the DSS Memorandum in Support of its Motion to Interview (July 8, 1996), DSS wrote:

> Article 612 contains no threshold requirement of reasonable suspicion. Article 612 requires only that a report must be received and then imposes strict requirements on [DSS] employees.

* * *

> Article 612 simply requires the right to the interview. There is no defense and there is no reason why [DSS] should not be allowed the right to interview the children.

The trial court effectively adopted this position by ruling that it was empowered to issue an order to every parent in every case to relinquish their child for interrogation. App. at 4a-6a. Nothing more than the mere receipt of an allegation of abuse or neglect is required.

DSS initially contended that Art. 613 of the Louisiana Children's Code authorized the requested court order which sought to authorize entry into the Billiot home and command interrogation of the Billiot children. When the Billiots argued that the supporting affidavits failed to meet Art. 613's requirement of demonstrating "reasonable suspicion" (and that this statute was unconstitutional for failing to require probable cause), DSS shifted its reliance to Art. 612. DSS claims that Louisiana courts *must* issue orders compelling the interrogation of children in every case regardless of the nature, quality, or amount of evidence concerning the alleged abuse or neglect of children.

The Louisiana appellate courts have silently adopted the argument of the DSS counsel's expansively statist interpretation of Art. 612 of the state's Children's Code.

In *Parham v. J. R.*, 442 U.S. 584 (1979), Chief Justice Burger echoed this Court's decision in *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), when he wrote for the majority:

> Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over

> minor children. Our cases have consistently followed that course; our constitutional system long ago rejected any notion that a child is "the mere creature of the State" and, on the contrary, asserted that parents generally "have the right, coupled with the high duty, to recognize and prepare [their children] for additional obligations."
>
> * * *
>
> As with so many other legal presumptions, experience and reality may rebut what the law accepts as a starting point; the incidence of child neglect and abuse cases attests to this. That some parents "may at times be acting against the interests of their children" creates a basis for caution, but is hardly a reason to discard wholesale those pages of human experience that teach that parents generally do act in the child's best interests. . . . The statist notion that governmental power should supersede parental authority in *all* cases because *some* parents abuse and neglect children is repugnant to American tradition.

442 U.S. at 602. (Internal citations omitted) (Emphasis in original).

Mr. and Mrs. Billiot have argued from the beginning of this litigation that the order issued requiring them to turn over their children for interrogation is a "warrant" within the meaning of the Fourth Amendment.

Proper Fourth Amendment analysis of the issues in this case necessarily begins with this Court's decision in *Griffin v. Wisconsin*, 483 U.S. 868 (1987). In *Griffin*, this Court held that whenever a judge issues a warrant, it is unconstitutional to apply any standard of evidence less than probable cause.

> While it is possible to say that Fourth Amendment reasonableness demands probable cause without a judicial warrant, the reverse runs up against the constitutional provision that "no Warrants shall issue, but upon probable cause." Amdt 4. The Constitution prescribes, in other words, that where the matter is of such a nature as to require a judicial warrant, it is also of such a nature as to require probable cause.

483 U.S. at 877.

There is little question that Judge Wimbish's order is a "warrant" authorizing a "seizure" within the meaning of the Fourth Amendment. This is clearly established by the general principles of this Court and the specific decisions of numerous lower courts. This conclusion is also supported by a law review article specifically analyzing Louisiana child abuse investigations. Comment, *Article 613 of the Louisiana Children's Code: Child Abuse Investigations in the Twilight of the Fourth Amendment*, 55 La. L. Rev. 362, 367 (1994).

This Court has held that the Fourth Amendment applies to civil proceedings and to searches by all state actors. *O'Connor v. Ortega*, 480 U.S. 709, 715 (1987) ("It would be anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior." (Internal quotations and citations

omitted)). *New Jersey v. T.L.O.*, 469 U.S. 325, 334-335 (1985) ("It is now beyond dispute that the Federal Constitution, by virtue of the Fourteenth Amendment, prohibits unreasonable searches and seizures by state officers.") *See also Soldal v. Cook County, Ill.*, 506 U.S. 56 (1992).

A number of lower courts have applied these principles to hold that the rules of the Fourth Amendment apply to searches and seizures conducted in both criminal and civil child abuse investigations. *Franz v. Lytle*, 997 F.2d 784 (10th Cir. 1993); *Good v. Dauphin*, 891 F.2d 1087 (3rd Cir. 1989); *White by White v. Pierce County*, 797 F.2d 812 (9th Cir. 1986); *State of Utah in the interest of A.R. v. Utah*, 314 Utah Adv. Rep. 9, 937 P.2d 1037 (Utah Ct. App. 1997); *see also H.R. v. Alabama Dep't of Human Resources*, 612 So. 2d 477 (Ala. App. 1992).

The Second Circuit relied on both the Fourth Amendment and search and seizure case law to rule that the rights of both parents and a child were violated by the temporary seizure of a child for an x-ray examination done exclusively to investigate potential child abuse. *Van Emrik v. Chemung County Dep't of Soc. Servs.*, 911 F.2d 863, 867 (2nd Cir. 1990). In *Zappala v. Albicelli*, 954 F. Supp. 538, 544 (N.D. N.Y. 1997), the court summarized *Van Emrik* as follows: "the state's assumption of custody of the child is a seizure under the Fourth Amendment."

"It must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away, he has seized that person." *Terry v. Ohio*, 399 U.S. 1, 16 (1968). In *Katz v. United States*, 389 U.S. 347 (1967), the Court explained that the Fourth Amendment "protects people, not places." 389 U.S. 347, 361 (1967) (Harlan, J., concurring). This Court has held that a detention for purposes of interrogation is a "serious intrusion upon the sanctity of the person and therefore must be tested by the Fourth Amendment's general proscription against searches and seizures." *Dunaway v. New York*, 442 U.S. 200, 209 (1979).

Moreover, the official comments accompanying the Louisiana Children's Code Article 613 clearly indicate an understanding that court orders authorizing entry into a home or compelling the interview of children are warrants:

> Though not expressly recognized by the source article, an entry order is a form of search warrant which, of course, generally requires a showing of probable cause and would ordinarily require conformity with all of the requirements of Articles 162-167 and the 4th Amendment of the United States Constitution and Article 1 § 5 of the Louisiana Constitution. The purpose of this article is to narrow the scope of investigation authorized by an entry order in order to avoid constitutional problems. In *Wyman v. James*, 400 U.S. 309 (1971) (home entry) and *T.L.O. v. New Jersey*, 469 U.S. 325 (1985) the Supreme Court has indicated that when the safety and welfare of a child are at issue, a showing of "reasonable suspicion" may suffice as justification for an intrusion to protect a child which would otherwise be prohibited for an entry for the purpose of investigating a crime. See generally, "Investigating Child Abuse: The Fourth Amendment and Investigatory Home Visits," 89 *Columbia Law Review* 1034 (1989).

Legislative counsel would have been better advised to rely on the 1987 decision of this Court in *Griffin* than a 1989 law review article to reach conclusions about Fourth Amendment law. Even if they were unable to find *Griffin* in their research, a simple reading of the language of the Fourth Amendment should

have led them to the conclusion that "no warrants shall issue, but upon probable cause."

Louisiana legislative counsel is not alone in making extravagant claims about the meaning of *Wyman*. *See, e.g., Wildauer v. Frederick County*, 993 F.2d 369, 372 (1993) (citing *Wyman* for the proposition that "investigative home visits by social workers are not subject to the same scrutiny as searches in the criminal context"); *Donald M. v. Matava*, 668 F. Supp. 703, 708 (D. Mass. 1987) (citing *Wyman* saying, "there is a substantial question whether warrantless home visits by social workers investigating claims of child abuse violate the Fourth Amendment"); *Lopkoff v. Slater*, 898 F. Supp. 767, 773 (D. Co. 1995) (reciting, and ultimately rejecting, social workers' reliance on *Wyman*: "The Defendants further argue that the searches were lawful because they occurred in connection with complaints about the welfare of Lopkoff's children, and a warrant was thus unnecessary.")

This construction of *Wyman* is blatantly erroneous. *Wyman* held that the routine home visit was not a search within the meaning of the Fourth Amendment because Mrs. James was free to say no to any visit whatsoever. She lost her welfare benefits, but she retained her privacy. This Court expressly said that the case would be entirely different had there been a criminal sanction which would have followed her refusal of the home visit. 400 U.S. at 325.

Mr. and Mrs. Billiot have no prerogative to tell the DSS investigator that they will simply decline her kind invitation to question their children. They have been ordered by the courts of that state to turn their children over for interrogation.

The majority of courts have rejected the argument that all child abuse investigations are immune from the requirements

of the Fourth Amendment. *Franz v. Lytle*, 997 F.2d 784 (10th Cir. 1993); *Good v. Dauphin*, 891 F.2d 1087 (3rd Cir. 1989); *White by White v. Pierce County*, 797 F.2d 812 (9th Cir. 1986); *State of Utah in the interest of A.R. v. Utah*; 937 P.2d 1037 (Utah Ct. App. 1997). *See also H.R. v. Alabama Dep't of Human Resources*, 612 So. 2d 477 (1992). *See especially Tenenbaum v. Williams*, 862 F. Supp. 962, 976 (E.D. N.Y. 1994) ("By contrast, the seizure in the present case was for investigative purposes, plaintiffs had no right or opportunity to oppose it, and no public monies were involved. *Wyman* does not, therefore, support a standard less than probable cause in the present case.")

Certiorari is necessary in this case for two principal reasons.

First, the highest courts in Louisiana have sanctioned a rule of law which renders the Fourth Amendment meaningless in all civil child abuse investigations. All Louisiana parents have lost any semblance of Fourth Amendment rights if someone anonymously whispers a rumor into a telephone connected to a child abuse hotline.

Second, the folk interpretations of *Wyman* which persist can only be properly cured by a decision of this Court. These interpretations of *Wyman* lie at the heart of many thousands of investigations of child abuse investigations which are unwarranted and yield troublesome results for children.

There are about two million reported cases of child abuse each year. U.S. Department of Health and Human Services, National Center on Child Abuse and Neglect, *Child Maltreatment 1995: Reports From the States to the National Child Abuse and Neglect Data System* (Washington, DC: U.S. Government Printing Office, 1997), pp. 2-1, App. at 12a. "Forty-eight States reported that about 1,675,000 investigations of alleged abuse or neglect were conducted in 1995." *Id.* at 2-3, App. at 14a. Only

36 percent of those investigations resulted in a disposition of either substantiated or indicated child maltreatment. *Id.* A substantial portion of the 57.9% of the cases which were unsubstantiated were undoubtedly like this one — the quality of the evidence of the allegations of abuse and neglect were nothing more than anonymous rumors.

The false interpretation of *Wyman* leads social workers to believe that they are authorized to investigate lies, rumors, and innuendo which necessarily dissipates their ability to focus time, personnel, and resources on the cases where there is actual evidence of children being abused. Children who are the subject of false allegations suffer trauma as well.

The advocates of a "child abuse exception" to the Fourth Amendment unleash a boilerplate litany of horrors no matter how flimsy the evidence in any particular case. The briefs filed below in this case demonstrate this propensity.

In the world of child abuse enforcement, the officials clearly believe that the "let's interrogate everyone and then sort it out later" theory is justified because of the possibility that "even one child might be abused."

The Constitution was written to protect the rights of citizens over the emotional impulses of government officials, no matter how noble their motivation.

Certiorari is necessary to restore the place of the Fourth Amendment in Louisiana and to silence those who would misuse *Wyman* attempting to create a child abuse exception to the Fourth Amendment.

CONCLUSION

For these reasons, Russell and Wendy Billiot ask this Court to grant the petition for a writ of certiorari.

Respectfully submitted,

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APPENDIX A — JUDGMENT OF THE STATE OF LOUISIANA, 32ND JUDICIAL DISTRICT COURT, PARISH OF TERREBONNE FILED OCTOBER 2, 1996

32ND JUDICIAL DISTRICT COURT
PARISH OF TERREBONNE
STATE OF LOUISIANA

DOCKET NO. 3966

STATE OF LOUISIANA
IN THE INTEREST OF
JEREMIAH BILLIOT, dob: 12/14/92
DANIEL BILLIOT, dob: 07/15/87
DAVID BILLIOT, dob: 05/03/85
RACHEL BILLIOT, dob: 10/09/82

JUDGMENT

This matter came before the Court on June 28, 1996, on a Motion and Order to Compel an Interview and a Motion and Order to Compel Entry, there being present:

THERESA A. BECKLER, Attorney for **DEPARTMENT OF SOCIAL SERVICES**,

JOEL HANBERRY and **MICHAEL P. FARRIS**, Attorneys for **MR. And MRS. RUSSELL BILLIOT**,

BERNADETTE PICKETT, ASSISTANT DISTRICT ATTORNEY, and

WILLIAM A. DUNCKLEMAN, PUBLIC DEFENDER'S OFFICE,

Appendix A

Appointed to represent the interest of the
MINOR CHILDREN

For written reasons this day assigned,

IT IS ORDERED, ADJUDGED, AND DECREED that the Motion and Order Compelling an Interview with the children be and is hereby granted.

IT IS ORDERED, ADJUDGED, AND DECREED that the Motion and Order Compelling Entry into the Billiot home for an inspection be and is hereby denied.

JUDGMENT RENDERED, READ AND SIGNED in Chambers, in Houma, Louisiana, on this 2nd day of October, 1996.

s/ Paul R. Wimbish
PAUL R. WIMBISH
DISTRICT JUDGE
DIVISION "E"

Appendix A

32ND JUDICIAL DISTRICT COURT
PARISH OF TERREBONNE
STATE OF LOUISIANA

DOCKET NO. 3966

STATE OF LOUISIANA
IN THE INTEREST OF
JEREMIAH BILLIOT, dob: 12/14/92
DANIEL BILLIOT, dob: 07/15/87
DAVID BILLIOT, dob: 05/03/85
RACHEL BILLIOT, dob: 10/09/82

REASONS FOR JUDGMENT

In this matter the State of Louisiana, Department of Social Services, Office of Community Services, and Parish of Terrebonne (hereinafter collectively Department of Social Services), filed a motion and order to compel an interview pursuant to Louisiana Children's Code Article 612, as well as, a motion an order to compel entry pursuant to Louisiana Children's Code Article 613. The parents of the minor children object to these motions on the grounds that the State has failed to show that there is a "reasonable suspicion" that these children are abused or neglected, that the State is acting in violation of their due process right to preserve family integrity, and that article 613 of the Children's Code is facially unconstitutional since it requires less that probable cause to gain entry into their home.

On November 27, 1995, the Department of Social Services received a complaint of neglect and abuse regarding the Billiot children. That complaint alleged that the Billiot children were left at home for hours at a time, the children were always running

in the street unsupervised, and that the two year old child who suffers from Downs Syndrome was observed in the middle of the street and that once the child was brought home, the parents were unaware that the child was not in the house.

The Department of Social Services argues that under Louisiana Children's Code Article 612, when they receive complaints of child abuse or neglect they *must* investigate, which investigation *shall* include an interview with the child. The Department of Social Services wants to interview the children out of the presence of their parents in order for the children not to be intimidated, as well as, conduct a "walk through" inspection of the Billiot home in order to determine if the children are being neglected. The Billiots have refused to allow the Department of Social Services to interview the children out of their presence and refused to allow any social workers to perform a "walk through" inspection of their home.

On January 3, 1996, the Court had granted an Order to the Department of Social Services compelling interview and entry pursuant to Children's Code Articles 612 and 613, however, that Order was subsequently set aside because the Court ruled that the affidavit of the Department of Social Services was defective. The Department of Social Services now seeks to cure that defect and have the Orders re-issued.

ISSUE OF COMPELLING AN INTERVIEW WITH THE CHILDREN

Louisiana Children's Code article 612(A), in pertinent part, states:

> Upon receiving a report of abuse or neglect

> of a child who is not in the custody of the state, the local child protection unit of the department shall promptly assign a level of risk to the child based on the information provided by the reporter. Reports of high an intermediate levels of risk shall be investigated promptly. This investigation shall include a preliminary investigation as to the nature, extent, and cause of the abuse or neglect and the identity of the person actually responsible for the child's condition. This preliminary investigation shall include an interview with the child and his parent or parents or other caretaker. . . .

As the article states, when a report of child abuse or neglect is received, the Department shall investigate. The Department is not given any discretion in the decision to investigate reports of child abuse or neglect, the only discretion the Department is given is in classifying the severity of the charge. In this case, the Department of Social Services readily admits that this is not the most serious of complaints, however, they still have a duty to investigate.

This article also states that the preliminary investigation shall include an interview with the child and his parent or parents or other caretaker. The Department of Social Services has a policy of interviewing children out of the presence of parents. This policy is in place so that in cases of abuse or neglect, the children are not intimidated by their parents. However, parents are not without their protections. Paragraph (C) of article 612 states that "all interviews of the child or his parents conducted in the course of a child protective investigation shall be tape-

recorded, if requested by the parent or parents." The Billiots have urged an objection to their children being interviewed out of their presence, however, they have given the Court no basis for this objection. The Court will therefore Order the Billiots to make their children available for an interview with the Department of Social Services in accordance with Children's Code Article 612. The Court would also remind the Billiots that they have the right to request the Department of Social Services to record the interviews as allowed by Children's Code Article 612(C). The Court is satisfied that the Department of Social Services is not unduly burdening the children or their parents in requesting the interview. The Department of Social Services is merely following what the legislature sets forth as the proper procedure in maintaining and protecting the health and welfare of children who are reported as being abused or neglected. Therefore, the motion and Order compelling the interview will be granted.

Judgment will be rendered accordingly.

MOTION AND ORDER FOR ENTRY

The more difficult question for the Court is whether the Department of Social Services has demonstrated that reasonable suspicion exists that the children have been abused or neglected in order to grant an Order to the Department of Social Services to enter the Billiots home to interview the children and to inspect the premises.

The children in this case are not in the State's custody. The Billiots also home school the children. The Department of Social Services is arguing that since the children are home schooled and are not in the State's custody, they must go to where the children can be found. They argue that this is in the Billiot's home. Article 613 of the Children's Code states:

Appendix A

> A. If in the course of an investigation of a report, admission cannot be obtained to the home, school, or any other place where the child may be found, the investigator shall apply to the juvenile court for an order authorizing an entry for the purposes of interviewing the child and other members of the household, for the visual inspection of the child, and for an inspection of the home to the extent such an inspection is essential to the investigation of specific allegations. The affidavit of the applicant must demonstrate:
>
> > (1) That reasonable suspicion exists that the child has been abused or neglected.
> >
> > (2) That entry has been denied. . . .

The State has demonstrated to the Court's satisfaction that an interview with the children is mandated. Since the children are taught at home, the Department of Social Services is unable to conduct these interviews at school. The court also realizes that at least one of the children is not of school age. Therefore, the Billiots are ordered to make their children available to the Department of Social Services for the purposes of interviewing the children, either at the Billiot's home, or at the Department of Social Services.

However, the Court is not satisfied that the Department of Social Services has demonstrated that an inspection of the Billiot's home is either essential or necessary to their

investigation of alleged abuse or neglect. The Court realizes Article 613 of the Children's Code provides the Department of Social Services a means of access to the children, however, the Court is not satisfied that the complaint is of a nature where inspection of the Billiot's home is essential to investigating this particular complaint. The Department of Social Services admits that even though they have a duty to investigate, this is not one of their most serious complaints. Here, the complaint is lack of supervision, not necessarily abuse. The Court fails to see the essential nature of inspecting the Billiot home to investigate the complaint that the children are not supervised.

The Court will note, if the interviews with the children raise more basis for this complaint, the Court will be willing to entertain the Department of Social Services' Motion and Order for entry at that time.

Since the Court finds that the Department of Social Services has not demonstrated that inspecting the Billiot's home is essential to their investigation of this complaint, the Court will defer from ruling on the constitutionality of Children's Code Article 613.

Judgment will be rendered accordingly.

Signed, Houma, Louisiana, on this 2nd day of October, 1996.

s/ Paul R. Wimbish
PAUL R. WIMBISH
DISTRICT JUDGE
DIVISION "E"

APPENDIX B — DENIAL OF THE APPLICATION FOR SUPERVISORY WRIT TO THE LOUISIANA FIRST CIRCUIT COURT OF APPEALS DATED MAY 21, 1997

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

NO. 96 CW 2508

May 21, 1997

STATE OF LOUISIANA
IN THE INTEREST OF
JEREMIAH BILLIOT, dob: 12/14/92
DANIEL BILLIOT, dob: 07/15/87
DAVID BILLIOT, dob: 05/03/85
RACHEL BILLIOT, dob: 10/09/82

versus

RUSSELL AND WENDY BILLIOT

In re: Russell and Wendy Billiot, applying for supervisory writ, 32nd Judicial District Court, Parish of Terrebonne, No. 3966.

WRIT DENIED.

BMF
RET
DMG

COURT OF APPEAL, FIRST CIRCUIT

s/ Karen West
DEPUTY CLERK OF COURT
FOR THE COURT

APPENDIX C — DENIAL OF THE APPLICATION FOR SUPERVISORY WRIT TO THE SUPREME COURT OF THE STATE OF LOUISIANA DATED JUNE 27, 1997

THE SUPREME COURT OF THE STATE OF LOUISIANA

NO. 97-CJ-166

STATE OF LOUISIANA
IN THE INTEREST OF
JEREMIAH BILLIOT, dob: 12/14/92
DANIEL BILLIOT, dob: 07/15/87
DAVID BILLIOT, dob: 05/03/85
RACHEL BILLIOT, dob: 10/09/82

vs.

RUSSELL AND WENDY BILLIOT

IN RE: Billiot, Russell; Billiot, Wendy; — Defendant(s); Applying for Supervisory and/or Remedial Writ; Parish of Terrebonne, 32nd Judicial District Court Div. "E" Number 3966; to the Court of Appeal, First Circuit, Number CW 96 2508

June 27, 1997

Denied.

CDK
PFC
WFM
HTL
CDT
JTK

Appendix C

JOHNSON, J. not on panel.

VICTORY, J. would grant the writ.

Supreme Court of Louisiana
June 27, 1997

s/ illegible
Clerk of Court
For the Court

APPENDIX D — EXCERPTS FROM CHILD MALTREATMENT 1995: REPORTS FROM THE STATES TO THE NATIONAL CHILD ABUSE AND NEGLECT DATA SYSTEM

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Administration for Children and Families
Administration on Children, Youth and Families
National Center on Child Abuse and Neglect

Child Maltreatment 1995:
Reports From the States to the
National Child Abuse and Neglect
Data System

This document has been prepared for the National Center on Child Abuse and Neglect by Walter R. McDonald & Associates, Inc., under contract number ACF-105-95-1849. Members of the Technical Team who have contributed to this report are: Ying-Ying T. Yuan, Ph.D., Project Director; Benjamin A. Cohen, M.A., Research Assistant; C. Courtney Elliott, Ph.D., Consultant; and David Struckman-Johnson, Ph.D., Consultant. Editing and report design have been conducted by Houston Associates, Inc., under contract number ACF-105-94-1840.

* * *

Section 2 1995 National Findings

This section presents the analyses of data on reports, dispositions, victims, services, and perpetrators collected through the SDC for 1995. In addition, analyses of selected 1995 DCDC case-level data from 11 States are presented to elaborate on key topics, including sources of reports, types of

maltreatment, child fatalities, and perpetrator relationships to the victims. An analysis of data from the Armed Services is also provided.

2.1 Report Data

The SDC findings presented in this section include the number of reports of alleged abuse and neglect, the number of children in reports, the rate of children who were subjects of reports, and the sources of reports.

Reports of Alleged Maltreatment

Child protective services agencies received and referred for investigation almost 2 million reports of alleged child abuse and neglect in 1995, involving both incident-based and child-based reports. An incident-based system counts each alleged maltreatment incident as one report, regardless of the number of children involved. A child-based system counts each child who is alleged to be a victim of maltreatment as a single report. Of the total of 1,988,514 reports, incident-based reports from 41 States made up 1,697,210, and the remaining 291,304 reports were child-based reports received from 10 States. The total number of reports referred for investigation in 1995 was about the same as in 1994.

Children in Reports

An estimated 3 million children were reported as alleged victims of maltreatment and referred for investigation. This number includes children who may have been reported and counted more than once during the year. The rate of children who were the subjects of reports was 43 children per 1,000 children younger

than 18 years of age in the general population. If each child were counted only once, the rate per 1,000 children would be somewhat lower.

The rate of children reported and referred for investigation varied considerably from State to State, ranging from about 8 to 108 per 1,000 children. However, the range in reporting rates was much smaller (between 35 and 53) for more than half of the States.

Several factors may influence the variation in rates. These factors include differences in State definitions of maltreatment and agency policies and procedures related to receiving and investigating reports. For example, the Pennsylvania child abuse registry does not collect data on . . .

* * *

2.2 Disposition Data

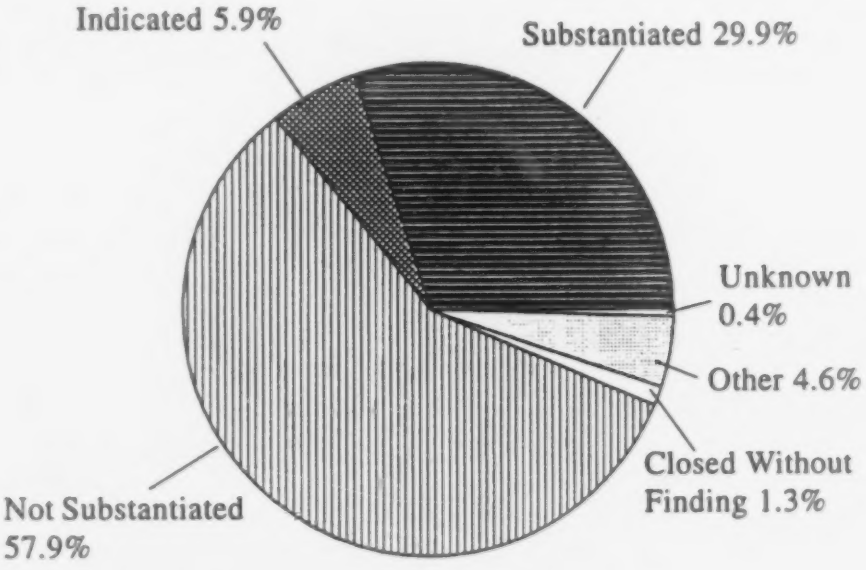
The findings discussed in this section include the dispositions of investigated reports of alleged maltreatment and of children involved in these reports.

Investigations of Reports

Forty-eight States reported that about 1,675,000 investigations of alleged abuse or neglect were conducted in 1995. Figure 2-2 shows that about 36 percent of the investigations resulted in a disposition of either substantiated or indicated child maltreatment. More than half of all dispositions resulted in a finding that child maltreatment was not substantiated. Based on data from five States, which identify intentionally false reports,

malicious or intentionally false reports constituted about 4 percent of not substantiated investigations. All other investigation dispositions, including "unknown," "closed without a finding," and "other" accounted for 6 percent of all dispositions.

Figure 2-2 Investigated Reports by Disposition



N = 1,675,372 reports from 48 states.

Data from the DCDC show that there is some variation in the dispositions of investigations by the source of the report of alleged maltreatment (see table D-1). About 66 percent of substantiated investigations and about 54 percent of indicated investigations resulted from reports from four professions — law enforcement, medicine, social services, and education.

* * *